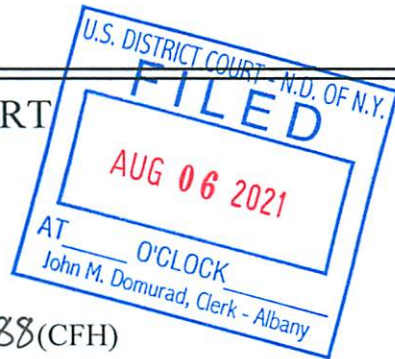


AO 91 (Rev. 11/11) Criminal Complaint

**ORIGINAL****UNITED STATES DISTRICT COURT**

for the

Northern District of New York

UNITED STATES OF AMERICA

v.

DANIEL DAY,

Defendant.

Case No. 1:21-mj- 388(CFH)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about August 5, 2021 in the county of Washington in the Northern District of New York the defendant violated:

Code Section

18 U.S.C. §§ 922(g)(1), 924(a)(2)

18 U.S.C. §§ 922(o), 924(a)(2)

Offense Description

Possession of a Firearm By a Prohibited Person

Illegal Possession of a Machinegun

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.*Michael DiCaprio**Complainant's signature*

FBI Special Agent Michael DiCaprio

Printed name and title

Attested to by the affiant in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.

Date: August 6, 2021*Judge's signature*City and State: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, **Michael DiCaprio**, being duly sworn, do hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I have been a Special Agent of the FBI for over 13 years. Since September of 2019, I have been assigned to the Joint Terrorism Task Force (JTTF) of the Albany Field Office. Prior to that assignment I served over 11 years on the JTTF at the John F. Kennedy International Airport Resident Agency (JFKRA) of the New York Field Office. I have been afforded the opportunity to work on a significant number of criminal investigations, including cases involving firearms and explosives.

2. I am an “investigative or law enforcement officer of the United States” within the meaning of Section 2510 (7) of Title 18, United States Code, that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516, Title 18, United States Code.

3. I submit this affidavit in support of a criminal complaint charging DANIEL DAY with violations of Title 18, United States Code, Section 922(g)(1) and 924(a)(2) [Possession of a Firearm and Ammunition By a Prohibited Person] and Title 18, United States Code, Section 922(o) and 924(a)(2) [Possession of a Machinegun].

4. Title 18, United States Code, Section 922(g)(1) provides, in pertinent part, that “[i]t shall be unlawful for any person who has been convicted in any court, of a crime punishable by a term of imprisonment exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” According to Title 18, United States Code, Section 921(a)(3), the term “firearm” means (A) any weapon (including a starter gun) which will or is

designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.”

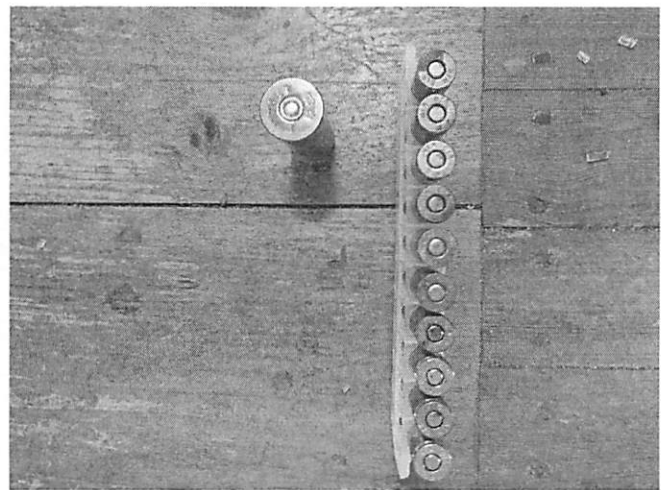
5. Title 18, United States Code, Section 922(o) provides, in pertinent part, that “[i]t shall be unlawful for any person to transfer or possess a machinegun.” According to Title 18, United States Code, Section 921(a)(23) and Title 26, United States Code, Section 5845(b), a “machinegun” means “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.”

6. This affidavit is founded on my personal knowledge based on my participation in this investigation, including the review of reports by myself and/or other law enforcement agents, communication with others who have personal knowledge of the events and circumstances described herein, and information gained through my training and experience. The information outlined below is provided for the limited purpose of establishing probable cause and does not contain all details or all facts known to me regarding this investigation.

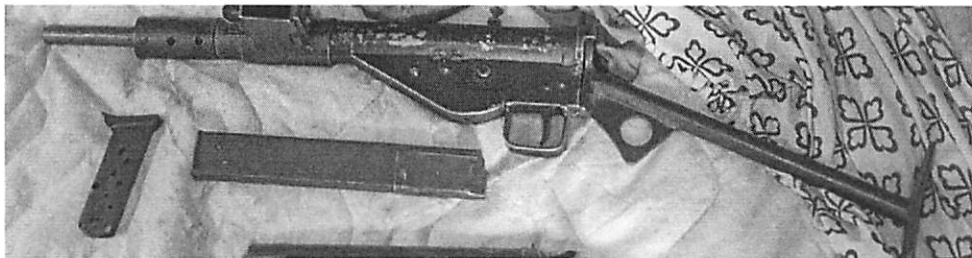
BASIS FOR PROBABLE CAUSE

7. On July 29, 2021, the Honorable Daniel J. Stewart, a U.S. Magistrate Judge in the U.S. District Court for the Northern District of New York, issued a search warrant (the “Warrant”) for Daniel Day’s residence at 124 Moon Road, Argyle, New York (“124 Moon Road”). The Warrant authorized the seizure of, among other items, any firearms and ammunition.

8. In executing the Warrant on August 5, 2021, law enforcement searched an area above a detached garage at 124 Moon Road and found the following ammunition: (i) 200 9mm rounds of ammunition manufactured by Sig Sauer and Blazer Brass; (ii) 20 rounds of .270 ammunition manufactured by the Winchester Repeating Arms Company (“Winchester”); and (iii) 2 boxes of 12-gauge shotgun ammunition manufactured by Winchester (collectively, the “Ammunition”). Photos of the Ammunition are displayed below:



9. In executing the Warrant on August 5, 2021, law enforcement also discovered several firearms in the first-floor bedroom of 124 Moon Road, including a Sten Mark II 9mm submachinegun with serial number BO236548 (the “Sten Mark”). The Sten Mark is pictured below:



10. After consultation with experts from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) with knowledge of the functionality of machineguns, I understand that

the Sten Mark is a weapon designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger, and can be classified as a machinegun.

11. Daniel Day's girlfriend (the "Girlfriend"), who was present at the time of the search, informed law enforcement that Daniel Day had acknowledged his status as a felon in a prior conversation with her. The Girlfriend also stated that Daniel Day resided at 124 Moon Road with her, and that Daniel Day had used the bedroom where the Sten Mark was recovered and had access to the area above the detached garage where the ammunition was found. Articles of male clothing were found in the bedroom where the Sten Mark was found.

12. Records obtained from Google LLC associated with a Gmail account associated with Daniel Day indicate that on or about November 13, 2020, Daniel Day searched for "sten mk2 used barrel" and visited a website for purchasing parts to assemble and manufacture a Sten Mark II 9mm submachine gun.

13. On September 23, 2010, Daniel Day was convicted, by a plea of guilty in the U.S. District Court for the Northern District of New York, of one count of possessing firearms as a prohibited person (as an unlawful user of marijuana), in violation of 18 U.S.C. §§ 922(g)(3), and 924(a)(2). That offense, a Class C felony offense, carried a maximum term of imprisonment of ten years. On January 14, 2011, the U.S. District Court for the Northern District of New York sentenced Daniel Day to 28 months of imprisonment followed by three years of supervised release. On or about February 2, 2012, Daniel Day admitted to three violations of his supervised release and the Court revoked Day's term of supervised release and sentenced him to an additional two and a half months of imprisonment followed by a new 24-month term of supervised release. Day served more than more than 22 months of actual imprisonment for that prior felony offense.

14. On August 6, 2021, I spoke with ATF Special Agent Young Choi, an interstate nexus expert, who provided an informal verbal opinion that the Ammunition recovered at 124 Moon Road are all manufactured outside the State of New York.

CONCLUSION

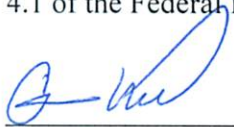
15. Based on the foregoing, your affiant submits that there is probable cause to conclude that on August 5, 2021, in Washington County, New York, DANIEL DAY violated Title 18, United States Code, Section 922(g)(1) and 924(a)(2) by possessing firearms and ammunition as a prohibited person who had been convicted of a crime punishable with a year or more of imprisonment, and violated Title 18, United States Code, Section 922(o) and 924(a)(2) by possessing a machinegun.

Attested to by the affiant,

Michael DiCaprio

Michael DiCaprio
Special Agent
Federal Bureau of Investigation (FBI)

I, the Honorable Christian F. Hummel, United States Magistrate Judge, hereby acknowledges that this affidavit was attested by the affiant by telephone on August 6, 2021, in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure:



Hon. Christian F. Hummel
United States Magistrate Judge